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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

---X

FONT DINER, INC.,

                               Plaintiff,

     -against-

MOMENTA, INC.,
         f/k/a
AMERICAN TRADITIONAL DESIGNS, INC.,

                       Defendant.

---X

CV09   528

COMPLAINT

(Jury Trial Demanded)

MATSUMOTO, J.

GO, M.J.

Plaintiff, FONT DINER, INC. ("Font Diner"), by and through its attorneys, The Martinez

Group PLLC, for its Complaint against Defendant, MOMENTA, INC. formerly known as,

AMERICAN TRADITIONAL DESIGNS, INC., ("Defendant" or "Momenta"), alleges as

follows:

NATURE AND SUBSTANCE OF THE ACTION

1.   Plaintiff files this action against Defendant for Copyright infringement under 17 U.S.C. §

       101, et seq., and Unfair Competition under the Lanham Act, 15 U.S.C. § 1125(a) and

       applicable State laws.

{00010413 v.1}

2.   This action is brought in response to a classic case of Copyright infringement,

specifically the unauthorized copying and commercial, for-profit use and distribution of

unauthorized derivative versions of works created from Plaintiff's type face font

software; in particular, the software associated with the Font Diner type face font Works

entitled STOVETOP, CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL

HEARTY and the FONT DINER DOT COM, type face fonts ("Works" "Work" "Font"

"Fonts"). Title 17 of the United States Code (Copyright Act) was enacted to provide

remedies to copyright owners who suffer damages by reason of such actions.

JURISDICTION AND VENUE

3.   This is an action for Copyright infringement arising under the Copyright Act of 1976, 17

U.S.C. § 101 et seq., and for the related claims of Unfair Competition under 15 U.S.C. §

1125(a) and applicable State laws, which seeks damages by reason of Defendant's

ongoing infringement of Font Diner's valid and subsisting Copyrights. This Court has

jurisdiction of this action under 28 U.S.C. §§ 1331, 1332, 1338(a) and 1338(b), its

supplemental jurisdiction, and under Rule 4 of the Federal Rules of Civil Procedure.

4.   Venue is proper in this district under 28 U.S.C. §1391 and §1400 in that Defendant or

Defendant's agents may be found in this District and Defendants transact business in this

District.

PARTIES

5.   Plaintiff Font Diner is a Minnesota corporation with its principal place of business

located at 3224 Anric Drive, Eau Claire, Wisconsin 54701.

6.   Defendant, Momenta is a New Hampshire Corporation with its principal place of

business at 442 First NH Turnpike, Northwood, New Hampshire 03261.

7.   Momenta is a designer and manufacturer of craft, stationary and home decorating

products with offices in New Hampshire, Hong Kong and Australia.

8.   Momenta also conducts business on the Internet via an online store, located at

http://www.momenta.com.

9.   Defendant Momenta conducts business within the State of New York, in the County of

Kings, within the Eastern District.

FACTS COMMON TO ALL CLAIMS

10.   Font Diner is engaged in the business of designing, creating, producing, marketing and

licensing the use of computer software in the nature of, *inter alia*, type face Fonts and art

design works in digital form for use with personal computers, commercial typesetting

devices.

11.   Font Diner created and is the exclusive owner of the copyrighted software for the

STOVETOP, CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL HEARTY and

the FONT DINER DOT COM, type face Fonts.

12.   Plaintiff Font Diner is the owner of U.S. Copyright Registrations TX 6-589-427 and

TXu1-326-997 and TXu1-326-996 for the Computer Programs for a LUNCH BOX

FONT COLLECTION and the Computer Programs for a COUNTY FAIR PICNIC

FONT SET, and the Computer Programs for the FONT DINER DOT COM, type face

fonts, respectively; copies of which are annexed hereto as Exhibit A (collectively, "Font

Collections").

13.   THE STOVE TOP type face Font forms a part of the copyrighted Computer Programs for

a LUNCH BOX FONT COLLECTION (Reg. Serial No.: TX 6-589-427) and the

SQUARE MEAL and the SQUARE MEAL HEARTY type face Fonts form a part of the

copyrighted Computer programs for a COUNTY FAIR PICNIC FONT SET (Reg. Serial

No.: TXu1-326-997) and the Computer Programs for the FONT DINER DOT COM, type

face font software is registered as TXu1-326-996.

14.   Font Diner's Copyrights are each valid and subsisting.

15.   Font Diner has sold and continues to sell and derive significant revenue from the sale of

licenses to use its STOVETOP, CHICKEN BASKET, SQUARE MEAL, SQUARE

MEAL HEARTY and the FONT DINER DOT COM, type face fonts and the licensing of

the various artworks embodied therein. Copies of showings of the STOVETOP,

CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL HEARTY and the FONT

DINER DOT COM, type face Fonts are annexed hereto as Exhibit B.

16.   Font Diner controls the use of its Fonts by means of its End User License Agreement

("EULA") which specifically prohibits the uses complained of herein without the

purchase of a special license. A Copy of Font Diner's EULA is annexed hereto as

Exhibit C.

17.   Font Diner is and has been at all times alleged herein, the sole owner of all rights, titles

and interests in and to the STOVETOP, CHICKEN BASKET, SQUARE MEAL,

SQUARE MEAL HEARTY and the FONT DINER DOT COM, type face fonts together

with the individual artworks and designs embodied therein.

DEFENDANT'S ACTIONS

18.   Defendant Momenta has caused the creation of unauthorized copies of STOVETOP, CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL HEARTY and the FONT DINER DOT COM, type face fonts to be used in the creation of alphabet products associated with "scrapbooking" activities, such as self adhesive letters, rub on letters, and die cut letters among others, showings of which are annexed hereto as Exhibit D.

19.   Defendant Momenta has not purchased a license from Font Diner to use the STOVETOP, CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL HEARTY and the FONT DINER DOT COM, type face font software.

20.   Defendant Momenta has not purchased a license from Font Diner to use the STOVETOP, CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL HEARTY and the FONT DINER DOT COM, Fonts as a resource for the creation of its various products.

21.   Defendant Momenta's use of STOVETOP, CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL HEARTY and the FONT DINER DOT COM, Font software is an infringement of Font Diner's valid Copyrights.

22.   The natural, probable and foreseeable result of Defendant's wrongful conduct has, and continues to be, to deprive Font Diner of the benefits and revenue from the sale of appropriate licenses to use STOVETOP, CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL HEARTY and the FONT DINER DOT COM, type Font software and injury to Font Diner's relationships with present and prospective customers who rely on the cachet that exclusive licensing creates in the various Font Diner Works.

23.   Font Diner has lost, and will continue to lose, substantial revenue from Defendant's wrongful use, copying, distribution and creation of unauthorized derivative works based

upon the STOVETOP, CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL HEARTY and the FONT DINER DOT COM, Fonts.

24. Defendant's wrongful conduct has deprived, and will continue to deprive, Font Diner of opportunities for expanding the goodwill associated with the Font Collections and individual STOVETOP, CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL HEARTY and the FONT DINER DOT COM, type face Font software.

25. Defendant has refused to cease and desist from infringing upon Font Diner's valuable Copyrights, despite several demands for such action.

FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 U.S.C. § 101

26. Font Diner repeats and realleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 25, inclusive, and incorporates them herein by this reference.

27. Defendant Momenta has infringed and will continue to infringe Font Diner's valuable Copyrights in and to the Font Collections containing the STOVETOP, CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL HEARTY and the FONT DINER DOT COM, type face Font software.

28. Font Diner is further entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendant as a result of the acts of infringement alleged herein, as well as attorneys' fees.

29. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Font Diner.

30. Font Diner has no adequate remedy at law.

SECOND CAUSE OF ACTION
UNFAIR COMPETITION
15 U.S.C. §1125(a)

31. Font Diner repeats and realleges each and every allegation of the Complaint as set forth

in Paragraphs 1 through 30, inclusive, and incorporates them herein by this reference.

32. Defendant Momenta's unauthorized use and distribution of Font Collections containing

the individual STOVETOP, CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL

HEARTY and the FONT DINER DOT COM, type face Font software and the creation of

unauthorized derivative works in connection with creation and sale of its craft, stationary

and home decorating products, constitutes false advertising, false designation of origin,

and false descriptions and representations that falsely describe and represent Defendant's

goods and/or services as being connected, endorsed or otherwise associated with Font

Diner, and by reason thereof, creates a false description or representation in interstate

commerce in violation of 15 U.S.C. § 1125(a).

33. By reason of Defendant's actions, Font Diner has been and will continue to be so

damaged.

34. Font Diner is further entitled to recover damages it has sustained and will continue to

sustain, together with any gains, profits, and advantages obtained by Defendant as a result

of the acts of infringement alleged herein, as well as attorneys' fees.

35. At present, the amount of such damages, gains, profits, and advantages cannot be fully

ascertained by Font Diner.

36. Font Diner has no adequate remedy at law.

THIRD CAUSE OF ACTION
DILUTION IN VIOLATION OF NEW YORK
STATE GENERAL BUSINESS LAW §360-1

37.   Font Diner repeats and realleges each and every allegation of the Complaint as set forth

in Paragraphs 1 through 36, inclusive, and incorporates them herein by this reference.

38.   Defendant Momenta has been, and continues to be, engaged in unfair and deceptive

practices in violation of Section 360-1 of New York State General Business Law.

39.   By reason of Defendant's acts, Font Diner has been seriously and irreparably injured, and

unless Defendant is restrained, Font Diner will continue to be so damaged.

40.   Font Diner is further entitled to recover damages it has sustained and will continue to

sustain, together with any gains, profits, and advantages obtained by Defendant as a result

of the acts of infringement alleged herein, as well as attorneys' fees.

41.   At present, the amount of such damages, gains, profits, and advantages cannot be fully

ascertained by Font Diner.

42.   Font Diner has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests and prays that this Court will:

1.   Preliminarily and permanently enjoin and restrain Defendant, its officers, directors,

principals, agents, servants, employees, successors, assigns and all those in active concert

or participation with it from:

(a)   imitating, copying, distributing, or making unauthorized use of Font Diner's

Registered Copyrights including the infringing use of the individual STOVETOP,

CHICKEN BASKET, SQUARE MEAL, SQUARE MEAL HEARTY and the FONT

DINER DOT COM, type face font software;

(b)   manufacturing, creating, producing, advertising, promoting, or displaying any

product bearing any simulation, reproduction, counterfeit, copy, derivative version, or

colorable imitation of Font Diner's Copyrighted Works;

2.   Direct that Defendant deliver for destruction at Defendant's expense, *inter alia*, all

computer files, hard drives, solid state drives, disks, CD-Rom's, DVD's, videotapes, and

all other recorded media together with all other items, including but not limited to craft,

stationary and home decorating products in its possession or under their control that were

created using Font Diner's Copyrighted works;

3.   Direct that Defendant be required to pay Font Diner actual damages in the amount of

Three Hundred Fifty Thousand ($350,000) Dollars or Statutory Damages under

Copyright Law, whichever is greater, for all gains, profits and advantages derived by

Defendant though their infringement of Font Diner's Copyrights;

4.   Direct that Defendant be required to pay to Font Diner such other damages that it has

sustained as a consequence of Defendant's unauthorized use, copying and distribution of

Font Diner's Copyrighted works;

5.   Direct that Defendant be ordered to make a written report within a reasonable period of

time to be filed with the Court detailing the manner of compliance with the requested

injunctive and mandatory relief above;

6.   Award Font Diner the costs of this action together with reasonable attorneys' fees; and

7.   Award Font Diner such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff, Font Diner, Inc. hereby demands a trial by jury.

Dated: February 9, 2009

Respectfully submitted,
THE MARTINEZ GROUP PLLC

By:
_____
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WebVoyage Titles - Mozilla Firefox

http://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?Search_Arg=Font&Search_Code=NALL&PID=Wall   Google

Copyright

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Public Catalog

Copyright Catalog (1978 to present)
Search Request: Left Anchored Name = Font Diner
Search Results: Displaying 1 through 9 of 9 entries.

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Resort results by: [▼]

#	Name (NALL) <	Full Title	Copyright Number	Date
☐ [1]	Font Diner, Inc.	Computer program for a Milwaukee typefont.	TX0006348660	1998
☐ [2]	Font Diner, Inc.	Computer program for a New York to Las Vegas typefront.	TX0006400364	2001
☐ [3]	Font Diner, Inc.	Computer programs for a Brownbag font collection of typefonts.	TX0006445068	1999
☐ [4]	Font Diner, Inc.	Computer programs for a casion buffet collection of typefonts.	TX0006061499	2002
☐ [5]	Font Diner, Inc.	Computer programs for a County Fair Picnic font set, collection of typefonts.	TXu001326997	2007
☐ [6]	Font Diner, Inc.	Computer programs for a FONTDINERDOTCOM typefont.	TXu001326996	2007
☐ [7]	Font Diner, Inc.	Computer programs for a FONTDINERDOTCOM typefont / by Font Diner, Inc.	TX0006567151	2007
☐ [8]	Font Diner, Inc.	Computer programs for a LUNCH BOX font collection	TX0006589427	2000
☐ [9]	Font Diner, Inc.	Computer programs for a TV dinner collection of typefonts.	TX0006061498	2000

Resort results by: [▼]

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Chowderhead
AaBbCcDdEeGgIiJjKkLlNnOo

Cocktail Script
AaBbCcDdEeFfGgHhIiJjMmRr

COUNTRY STORE
AABBCCDDEEFFGGHHIIJJKKLLNN

DAIRYLAND
ABCDEFGHIJKLMNOPQRSTUVWXYZ
1234567689!@#$%^€*()_+{}[]=¢€?

Emblem Chief
AaBbCcDdEeFfGgHhIiJjKk
LlMmNnOoPpQqRrSsWx

MOTEL KING
AABBCCDDEEFFGGHHIIJJKK
LLMMNNOOPPQQRRSSWW

QUEEN ROSIE
AABBCCDDEEFFGGHHIIJJ
KKLLMMNNOOPPQQRRSS

SWEET ROSIE
AABBCCDDEEFFGGHHIIJJ
KKLLMMNNOOPPQQRRSS

Secret Recipe
AaCcDdEeFfGgHhIiJjKkLl

SQUARE MEAL
ACCDDEEFFGGHHIIJJKKL
MMNNOOPPQQRRSSU

SQUARE MEAL HEARTY
ACCDDEEFFGGHHIIJJKKL
MMNNOOPPQQRRSSTU

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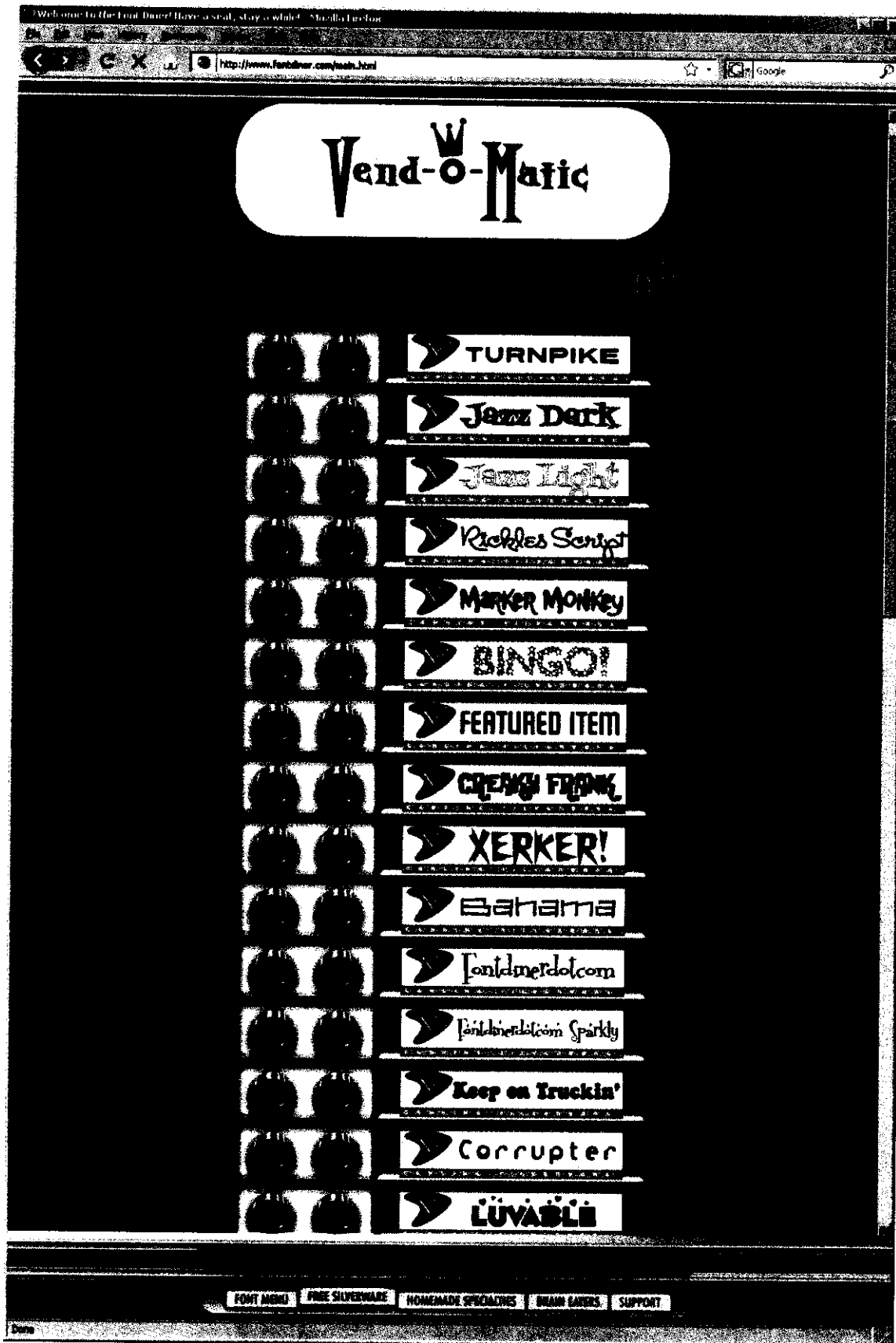
SELECT FONT SET Lunch Box Font Set

The   Font Set
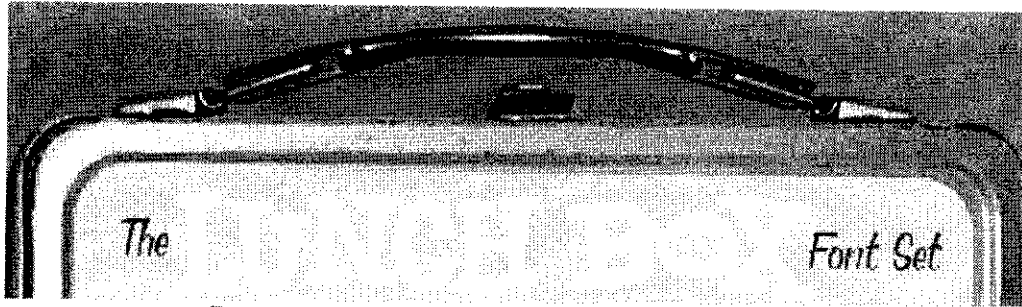
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AUTOMATIC
ABCDEFGHIJKLMNOPQRSTUVW

CHICKEN KING
AaBBCCDDFFG iiJjKKLLMMN oPPQQ

StoVetoP
aBCDeFGHiJKLmnoPQRStUZ

Kitchenette
AaBbCcDd FfGgHhIiJj

Doggie Bag Script
AaBbCcDdFfGgHhIiJjKkLlMmNnOoPpQq

JOHNNY LUNCHPAiL*
aBCDEFGHiJKLMNOPQRSTU

REGULATOR
ABCDEFGHIJKLMNOPQRS

Motorcar Atlas
AaBb CcDd Ff Gg HhIi Jj Kk Ll

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Back to General Questions

{00011963 v.1}